

STATEMENT

of the COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
at the Public Meeting on DFARS 2012-D055

“Detection and Avoidance of Counterfeit Electronic Parts”

June 28, 2013

Presented by

Alan Chvotkin, Chair, CODSIA Operating Committee
and Executive Vice President, the Professional Services Council

The Council of Defense and Space Industry Associations (CODSIA) was formed in 1964, at the suggestion of the Department of Defense by industry associations with common interests in federal procurement policy. CODSIA now consists of six associations – the Aerospace Industries Association (AIA), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), the American Council of Engineering Companies (ACEC), TechAmerica, and the U.S. Chamber of Commerce. CODSIA’s member associations represent thousands of government contractors nationwide and the Council acts as an institutional focal point for coordination of its members’ positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent. When CODSIA submits comments, we are presenting a consensus view of the signatories. As such, we hope we are not viewed just another single commentator.

You have heard some common themes with respect to the proposed rule on “Detection and Avoidance of Counterfeit Electronic Parts” from two CODSIA members as well as others. Many, if not all of those themes, are embodied in the questions below.

- What is a “trusted supplier” in the proposed rule, a term used in the statute and which deserves definition?
- How does this rule fit in with the unpublished rules further implementing the statute?
- How will the use of Government Industry Data Exchange Program (GIDEP) be implemented?
- How will contractors obtain approval as a “legally authorized source?”
- How will avoidance and detection of counterfeit parts be managed and measured as part of the Purchasing System?
- Will it be the Contracting Officer who determines whether a part is counterfeit?
- Will a CO’s determination of a counterfeit part be a final decision subject to the disputes clause?
- How will contractors recover costs if an initially identified counterfeit part or suspect counterfeit part is determined not to be counterfeit?
- Is the Department willing to accept the additional costs imposed by the implementation goals set forth in the rule?
- Does the Department agree with the need for an exemption for commercial items and COTS based products from this compliance scheme?
- Will the Department develop an approved method for acquiring obsolete parts to take the guess work out of the challenge?
- If there is to be reliance on approval of CPSR, will the counterfeit parts portion be approved under an existing approved system as of the applicable date of the rule? If not, what mechanism will be instituted to assure timely approval of contractors systems (including their counterfeit parts avoidance and detection measures)?

The proposed rule has many working parts and as such presents numerous policy conflicts. For instance, what happens if a legally authorized or trusted source is a sole source? Does competition or safety take precedence? What about data rights? Is the government willing to forgo unlimited rights in an item to protect against counterfeiting or cloning? These are not issues that can be addressed “as we go” given the consequences of non-compliance.

CODSIA is concerned that we are submitting comments on a proposed rule without knowing more about what the provisions in the proposed rule are connected to. It is essential that industry and the public have a better understanding of the rationale and the trade-offs that are embedded in this proposed rule. It is also important that we understand what is missing – such as reporting – to know how it will affect and be affected by the proposed rule. This area of regulation is too important to rush into implementation without careful consultation with affected stakeholders within and outside of government.

CODSIA association members have recommended that DoD, the FAR Council, DoJ, DHS and others engage with industry in a collaborative dialogue for enhancing the ability to devise a workable and effective risk-based approach that balances compliance and compliance costs and that works. CODSIA offers our umbrella organization as a convener for this on-going discussion, if you and others in government find that acceptable. There is widespread support for a regime that will provide protection

against fake and potentially unsafe and/or malicious elements in America's weapon systems and other governmental purchases. We look forward to working with you to frame those regulations.

In closing we would like to thank you for hosting this public meeting and CODSIA's member associations look forward to working with you on the further development of this policy.

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